

House File 219 - Introduced

HOUSE FILE 219

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A BILL FOR

1 An Act relating to eminent domain authority and procedures and
2 including effective date and applicability provisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **6A.15 Property on state historic**
2 **registry.**

3 1. Property listed on the state register of historic places
4 maintained by the historical division of the department of
5 cultural affairs shall not be removed from the register solely
6 for the purpose of allowing acquisition of the property by
7 condemnation, unless such condemnation is undertaken by the
8 department of transportation.

9 2. Property listed on the state register of historic places
10 maintained by the historical division of the department of
11 cultural affairs shall not be condemned by the state or a
12 political subdivision unless a joint resolution authorizing
13 commencement of the condemnation proceedings is approved by a
14 vote of at least two-thirds of the members of both chambers of
15 the general assembly and signed by the governor. The approval
16 requirements of this subsection shall not apply to condemnation
17 undertaken by the department of transportation.

18 Sec. 2. Section 6A.19, Code 2013, is amended to read as
19 follows:

20 **6A.19 Interpretative clause.**

21 A grant in this chapter of right to take private property
22 for a public use shall not be construed as limiting a like
23 grant elsewhere in the Code for another and different use.
24 Unless specifically provided by law, this chapter shall not
25 be construed to limit or otherwise affect the application of
26 chapters 478 and 479 to the eminent domain authority of the
27 utilities division of the department of commerce.

28 Sec. 3. Section 6A.22, subsection 2, paragraph c,
29 subparagraph (1), Code 2013, is amended to read as follows:

30 (1) (a) If private property is to be condemned for
31 development or creation of a lake, only that number of acres
32 justified as reasonable and necessary for a surface drinking
33 water source, and not otherwise acquired, may be condemned.
34 In addition, the acquiring agency shall conduct a review of
35 prudent and feasible alternatives to provision of a drinking

1 water source prior to making a determination that such
2 lake development or creation is reasonable and necessary.
3 Development or creation of a lake as a surface drinking water
4 source includes all of the following:

5 (i) Construction of the dam, including sites for suitable
6 borrow material and the auxiliary spillway.

7 (ii) The water supply pool.

8 (iii) The sediment pool.

9 (iv) The flood control pool.

10 (v) The floodwater retarding pool.

11 (vi) The surrounding area upstream of the dam no higher in
12 elevation than the top of the dam's elevation.

13 (vii) The appropriate setback distance required by state or
14 federal laws and regulations to protect drinking water supply.

15 (b) For purposes of this subparagraph (1), *number of acres*
16 *justified as reasonable and necessary for a surface drinking*
17 *water source*" means according to guidelines of the United
18 States natural resource conservation service and according to
19 analyses of surface drinking water capacity needs conducted by
20 one or more registered professional engineers. The registered
21 professional engineers may, if appropriate, employ standards
22 or guidelines other than the guidelines of the United States
23 natural resource conservation service when determining the
24 number of acres justified as reasonable and necessary for
25 a surface drinking water source. The data and information
26 used by the registered professional engineers shall include
27 data and information relating to population and commercial
28 enterprise activity for the area from the two most recent
29 federal decennial censuses unless the district court of the
30 county in which the property is situated has determined by
31 a preponderance of the evidence that such data would not
32 accurately predict the population and commercial enterprise
33 activity of the area in the future.

34 (c) A second review or analysis of the drinking water
35 capacity needs shall be performed upon receipt by the acquiring

1 agency of a petition signed by not less than twenty-five
2 percent of the affected property owners. The registered
3 professional engineer to perform the second review or analysis
4 shall be selected by a committee appointed by the affected
5 property owners and whose membership is comprised of at
6 least fifty percent property owners affected by the proposed
7 condemnation action. The acquiring agency shall be responsible
8 for paying the fees and expenses of such an engineer.

9 (d) If private property is to be condemned for development
10 or creation of a lake, the plans, analyses, applications,
11 including any application for funding, and other planning
12 activities of the acquiring agency shall not include or provide
13 for the use of the lake for recreational purposes.

14 Sec. 4. Section 6B.54, subsection 10, paragraph a, Code
15 2013, is amended by adding the following new subparagraph:

16 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and
17 reasonable costs not to exceed one hundred thousand dollars,
18 attributable to a determination that the creation of a lake
19 through condemnation includes a future recreational use or that
20 a violation of section 6A.22, subsection 2, paragraph "c",
21 subparagraph (1), subparagraph division (d), has occurred, if
22 such fees and costs are not otherwise provided under section
23 6B.33.

24 Sec. 5. NEW SECTION. 6B.56B **Disposition of condemned**
25 **property — two-year time period.**

26 1. When two years have elapsed since property was condemned
27 for the creation of a lake according to the requirements of
28 section 6A.22, subsection 2, paragraph "c", subparagraph (1),
29 and the property has not been used for or construction has
30 not progressed substantially from the date the property was
31 condemned for the purpose stated in the application filed
32 pursuant to section 6B.3, and the acquiring agency has not
33 taken action to dispose of the property pursuant to section
34 6B.56, the acquiring agency shall, within sixty days, adopt a
35 resolution offering the property for sale to the prior owner

1 at a price as provided in section 6B.56. If the resolution
2 adopted approves an offer of sale to the prior owner, the offer
3 shall be made in writing and mailed by certified mail to the
4 prior owner. The prior owner has one hundred eighty days after
5 the offer is mailed to purchase the property from the acquiring
6 agency.

7 2. If the acquiring agency has not adopted a resolution
8 described in subsection 1 within the sixty-day time period, the
9 prior owner may, in writing, petition the acquiring agency to
10 offer the property for sale to the prior owner at a price as
11 provided in section 6B.56. Within sixty days after receipt of
12 such a petition, the acquiring agency shall adopt a resolution
13 described in subsection 1. If the acquiring agency does not
14 adopt such a resolution within sixty days after receipt of the
15 petition, the acquiring agency is deemed to have offered the
16 property for sale to the prior owner.

17 3. The acquiring agency shall give written notice to the
18 owner of the right to purchase the property under this section
19 at the time damages are paid to the owner.

20 Sec. 6. Section 364.4, subsection 1, paragraph a,
21 unnumbered paragraph 1, Code 2013, is amended to read as
22 follows:

23 Acquire, hold, and dispose of property outside the city in
24 the same manner as within. However, the power of a city to
25 acquire property outside the city does not include the power
26 to acquire property outside the city by eminent domain, except
27 if viable alternatives do not exist within the city and the
28 acquisition of the property is necessary for the following,
29 subject to the provisions of chapters 6A and 6B:

30 Sec. 7. Section 403.7, subsection 1, unnumbered paragraph
31 1, Code 2013, is amended to read as follows:

32 A municipality shall have the right to acquire by
33 condemnation any interest in real property, including a fee
34 simple title thereto, which it may deem necessary for or in
35 connection with an urban renewal project under this chapter,

1 subject to the limitations on eminent domain authority
2 in ~~chapter~~ chapters 6A and 6B. However, a municipality
3 shall not condemn agricultural land included within an
4 economic development area for any use unless the owner of
5 the agricultural land consents to condemnation or unless ~~the~~
6 ~~municipality determines that the land is necessary or useful~~
7 viable alternatives to the condemnation of agricultural land do
8 not exist and the acquisition of the property is necessary for
9 any of the following:

10 Sec. 8. NEW SECTION. 423B.11 Use of revenues — limitation.

11 The revenue raised by a local sales and services tax imposed
12 under this chapter by a county shall not be expended for any
13 purpose related to a project that includes the condemnation of
14 private property for the creation of a lake according to the
15 requirements of section 6A.22, subsection 2, paragraph "c",
16 subparagraph (1), if the local sales and services tax has not
17 been approved at election in the area where the property to be
18 condemned is located.

19 Sec. 9. Section 455A.5, Code 2013, is amended by adding the
20 following new subsection:

21 NEW SUBSECTION. 7. The authority granted to the commission
22 to acquire real property for purposes of carrying out a
23 duty related to development or maintenance of the recreation
24 resources of the state, including planning, acquisition, and
25 development of recreational projects, and areas and facilities
26 related to such projects, shall not include the authority to
27 acquire real property by eminent domain.

28 Sec. 10. Section 456A.24, subsection 2, unnumbered
29 paragraph 1, Code 2013, is amended to read as follows:

30 Acquire by purchase, ~~condemnation~~, lease, agreement,
31 gift, and devise lands or waters suitable for the purposes
32 hereinafter enumerated, and rights-of-way thereto, and to
33 maintain the same for the following purposes, ~~to wit~~:

34 Sec. 11. Section 456A.24, Code 2013, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 15. The authority granted the department
2 to acquire real property for any statutory purpose relating to
3 the development or maintenance of the recreation resources of
4 the state, including planning, acquisition, and development
5 of recreational projects, and areas and facilities related to
6 such projects, shall not include the authority to acquire real
7 property by eminent domain.

8 Sec. 12. Section 461A.7, Code 2013, is amended to read as
9 follows:

10 **461A.7 ~~Eminent domain~~ Purchase of lands — public parks.**

11 The commission may purchase ~~or condemn~~ lands from willing
12 sellers for public parks. ~~No~~ A contract for the purchase of
13 such public parks shall not be made to an amount in excess of
14 funds appropriated therefor by the general assembly.

15 Sec. 13. Section 461A.10, Code 2013, is amended to read as
16 follows:

17 **461A.10 Title to lands.**

18 The title to all lands purchased, ~~condemned,~~ or donated,
19 hereunder, for park ~~or highway~~ purposes and the title to all
20 lands purchased, condemned, or donated hereunder for highway
21 purposes, shall be taken in the name of the state and if
22 thereafter it shall be deemed advisable to sell any portion of
23 the land so purchased or condemned, the proceeds of such sale
24 shall be placed to the credit of the ~~said~~ public state parks
25 fund to be used for such park purposes.

26 Sec. 14. Section 463C.8, subsection 1, paragraph k, Code
27 2013, is amended to read as follows:

28 *k.* The power to acquire, own, hold, administer, and dispose
29 of property, except that such power is not a grant of authority
30 to acquire property by eminent domain.

31 Sec. 15. REPEAL. Sections 461A.9 and 461A.75, Code 2013,
32 are repealed.

33 Sec. 16. EFFECTIVE UPON ENACTMENT. This Act, being deemed
34 of immediate importance, takes effect upon enactment.

35 Sec. 17. APPLICABILITY. This Act applies to projects or

1 condemnation proceedings pending or commenced on or after the
2 effective date of this Act.

3 EXPLANATION

4 This bill makes changes relating to eminent domain authority
5 and procedures.

6 The bill provides that property listed on the state register
7 of historic places shall not be removed from the register
8 solely for the purpose of allowing the property to be acquired
9 by condemnation unless the condemnation is undertaken by
10 the department of transportation. The bill also provides
11 that property on the state register of historic places may
12 not be condemned unless a joint resolution authorizing the
13 condemnation is approved by a vote of at least two-thirds
14 of each house of the general assembly and signed by the
15 governor. This approval procedure, however, does not apply to
16 a condemnation undertaken by the department of transportation.

17 The bill specifies that Code chapter 6A, unless specifically
18 provided by law, is not to be construed to limit or otherwise
19 affect the application of Code chapters 478 and 479 to the
20 eminent domain authority of the utilities division of the
21 department of commerce.

22 The bill makes changes relating to eminent domain authority
23 in relation to development or creation of a lake. The bill
24 provides that when determining the number of acres justified as
25 reasonable and necessary for a surface drinking water source,
26 the registered professional engineers may, if appropriate,
27 employ standards or guidelines other than the guidelines of
28 the United States natural resource conservation service. The
29 bill requires the data and information used by the registered
30 professional engineers to include data and information relating
31 to population and commercial enterprise activity for the area
32 from the two most recent federal decennial censuses unless the
33 district court of the county in which the property is situated
34 has determined by a preponderance of the evidence that such
35 data would not accurately predict the population and commercial

1 enterprise activity of the area in the future.

2 The bill also provides that a second review or analysis
3 of the drinking water capacity needs shall be performed upon
4 receipt by the acquiring agency of a petition signed by not
5 less than 25 percent of the affected property owners. The
6 registered professional engineer to perform the second review
7 or analysis shall be selected by a committee appointed by the
8 affected property owners and comprised of at least 50 percent
9 property owners affected by the proposed condemnation action.

10 The bill further provides that the acquiring agency shall
11 pay for the services of such an engineer. The bill provides
12 that if private property is to be condemned for development
13 or creation of a lake, the plans, analyses, applications,
14 including any application for funding, and other planning
15 activities of the acquiring agency shall not include or provide
16 for the use of the lake for recreational purposes.

17 The bill adds reasonable attorney fees and reasonable costs
18 that are attributable to certain condemnation proceedings
19 relating to the creation of a lake, up to \$100,000, to the list
20 of expenses reimbursable by an acquiring agency to a property
21 owner.

22 The bill provides that when two years have elapsed since
23 property was condemned for the creation of a lake and the
24 property has not been used for or construction has not
25 progressed substantially for the purpose stated in the
26 application, and the acquiring agency has not taken action to
27 dispose of the property pursuant to Code section 6B.56, the
28 acquiring agency shall, within 60 days, adopt a resolution
29 offering the property for sale to the prior owner at a price
30 as provided in Code section 6B.56. If the acquiring agency
31 has not adopted a resolution within the 60-day time period,
32 the prior owner may petition the acquiring agency to offer the
33 property for sale to the prior owner at a price as provided in
34 Code section 6B.56. The bill requires the acquiring agency to
35 give written notice to the owner at the time damages are paid

1 to the owner of the right to purchase the property under such
2 circumstances.

3 The bill adds a condition to the circumstances in which a
4 city may condemn land outside the city limits to provide that
5 condemnation may occur if viable alternatives do not exist
6 within the city and the acquisition of the land is necessary
7 for the purposes stated in current law. The bill also amends
8 urban renewal law relating to the circumstances in which a
9 municipality may condemn agricultural land within an economic
10 development urban renewal area to provide that condemnation may
11 occur if viable alternatives do not exist and the acquisition
12 of the land is necessary for the purposes stated in current
13 law.

14 The bill provides that the revenue raised by a local sales
15 and services tax imposed under Code chapter 423B by a county
16 shall not be expended for any purpose related to a project
17 that includes the condemnation of private property for the
18 creation of a lake if the local sales and services tax has not
19 been approved at election in the area where the property to be
20 condemned is located.

21 The bill provides that the department of natural resources
22 and the natural resource commission shall not exercise eminent
23 domain authority to acquire real property for purposes of
24 carrying out a duty related to development or maintenance of
25 the recreation resources of the state, including planning,
26 acquisition, and development of recreational projects, and
27 areas and facilities related to such projects. The bill
28 retains the department's authority to acquire property through
29 condemnation for highway purposes.

30 The bill takes effect upon enactment and applies to projects
31 or condemnation proceedings pending or commenced on or after
32 that date.